UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

In re PETER VAN DAAM Civil Action No. 90-0128-T

PETER VAN DAAM,

Debtor-Appellant,

v.

CHRYSLER FIRST FINANCIAL SERVICES CORPORATION,

Creditor-Appellee.

MEMORANDUM AND ORDER

Ernest C. Torres, United States District Judge.

This is Peter Van Daam's ("Van Daam") appeal from an Order of the Bankruptcy Court denying his Motion for Enforcement of a Stay of Foreclosure proceedings and granting Chrysler First Financial Services Corporation's ("Chrysler") Motion for Emergency Relief from the automatic stay, both pursuant to 11 U.S.C. § 362 (1988 & Supp. 1990). For reasons hereinafter stated the appeal is denied, and the Order of the Bankruptcy Court is affirmed.

BACKGROUND

Van Daam is the former owner and resident of a house at 46-48 East George Street in Providence, Rhode Island. Chrysler held a mortgage on the property as security for a loan it made to Van Daam. In 1988, Chrysler foreclosed on its mortgage and purchased the property at the foreclosure sale.

When Van Daam refused to vacate the premises, Chrysler sued him in state court for possession of the property and for

damages for Van Daam's continued use and occupation. A default judgment was entered against Van Daam and his appeal was denied by the Rhode Island Supreme Court. Chrysler First Fin. Serv. Corp. v. Van Daam, 566 A.2d 390 (R.I. 1989). See also Chrysler First Fin. Serv. Corp. v. Van Daam, __ A.2d __, No. 91-77 (R.I. March 11, 1992).

While that appeal was pending, Van Daam sued Chrysler in this Court under 42 U.S.C. § 1983 (1988) alleging that the foreclosure violated his civil rights. That suit was dismissed for, among other things, failure to meet the "state action" requirement under § 1983. Van Daam v. Chrysler First Fin. Serv. Corp., 124 F.R.D. 32 (D.R.I. 1989) (Magistrate Judge's Memorandum and Order). Van Daam's appeal was denied by the First Circuit. Van Daam v. Chrysler First Fin. Serv. Corp., 915 F.2d 1557 (1st Cir. 1990) (per curiam unpublished decision).

In a further effort to prevent eviction, Van Daam filed a bankruptcy petition and sought to invoke the automatic stay provision of Chapter 13. Chrysler responded with a motion for emergency relief from the automatic stay. After the Bankruptcy Court granted Chrysler's motion and denied Van Daam's motion, Van Daam was forcibly evicted.

STANDARD OF REVIEW

Bankruptcy Rule 8013 sets forth the standard of review to be applied by district courts with respect to bankruptcy appeals. Rule 8013 provides:

> On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Bankr. R. 8013 (emphasis added).

Thus, in reviewing a decision of a bankruptcy court, a district court must accept the bankruptcy judge's findings of fact unless they are clearly erroneous. Id.; Briden v. Foley, 776 F.2d 379, 381 (1st Cir. 1985). On the other hand, a bankruptcy court's conclusions of law are not entitled to the same deference. They are subject to de novo review. See In re BWL, Inc., 123 B.R. 675, 682 (D. Me. 1991); In re First Software Corp., 107 B.R. 417 (D. Mass. 1989); see also 28 U.S.C.A. § 158(c) (West Supp. 1991).

DISCUSSION

Van Daam has failed to explain what error the Bankruptcy Court allegedly committed in refusing to stay the eviction. Van Daam's contention is that he had met his obligations under the promissory note to Chrysler, and therefore, Chrysler had no right to foreclose. However, that claim is precluded by the doctrine of res judicata. That doctrine prevents parties "from relitigating issues that were raised or could have been raised in a previous action in which there was a final judgment on the merits." In re Grenert, 108 B.R. 1, 3 (D. Me. 1989) (citing Mangeo v. Orleans Bd. of Trade, 773 F.2d 1, 5 (1st Cir. 1985)). In order for res

judicata to apply, three requirements must be met: (1) the prior and subsequent actions must involve the same parties or their privies, (2) the prior and subsequent actions must involve the same claims, and (3) a court of competent jurisdiction must have entered a final judgment on the merits in the prior action. D'Amario v. Butler Hosp., 921 F.2d 8, 10 (1st Cir. 1990) (quoting Schiavulli v. Aubin, 504 F. Supp. 483, 486 (D.R.I. 1980)). See also Manego v. Orleans Bd. of Trade, 773 F.2d at 5-7; Capraro v. Tilcon Gammino, Inc., 751 F.2d 56, 58-59 (1st Cir. 1985).[1]

In this case, the same parties participated in the state court litigation and the bankruptcy proceeding. In addition, the identity of claims requirement is satisfied because Van Daam's claims in this appeal raise the same issues that were the subject of the prior state court litigation, namely, Chrysler's entitlement to foreclose on the East George Street property. Finally, the final judgment requirement is met because a default judgment stands on the same footing as a judgment on the merits. Rhode Island Hosp. Trust Nat'l Bank v. Ohio Casualty Ins. Co., 789 F.2d 74, 81 n.10 (1st Cir. 1986). In short, Van Daam is barred from relitigating Chrysler's right to foreclose in this proceeding.

The Court also notes that Van Daam neither sought nor obtained a stay of the Bankruptcy Court's Order pending his appeal.

---

[1] A nearly identical test is applied where a federal court confers preclusive effect upon a prior federal judgment. The First Circuit has adopted § 24 of the Restatement (Second) of Judgments (1982) as its res judicata rule. Manego, 773 F.2d at 5. The Restatement applies a broad "transactional" definition to the term "claim." Id. (quoting Restatement (Second) of Judgments § 24 (1982).

See Bankr. R. 8005. Since, the property has been sold at a foreclosure sale, Van Daam's appeal is now moot. To hold otherwise would deprive foreclosure sales of finality thereby creating uncertainty as to the status of the title to property acquired at such sales. See In re Matos, 790 F.2d 864, 865 (11th Cir. 1986); Greylock Glen Corp. v. Community Sav. Bank, 656 F.2d 1, 4 (1st Cir. 1981) (citations omitted); see also In re Stadium Management Corp., 895 F.2d 845, 847-49 (1st Cir. 1990) (discussing mootness principle in context of trustee's sale of assets under 11 U.S.C. § 363 (1988)).

CONCLUSION

For all the foregoing reasons, Van Daam's appeal of the Bankruptcy Court's Order is denied, and the Order is affirmed.

IT IS SO ORDERED.

_____
Ernest C. Torres
United States District Judge

March _____, 1992